IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1085 OF 2003

Shri. Vinayak Sopan Madane ...Petitioner

V/s.

The State of Maharashtra ...Respondent

Shri. Vishwanath S.Talkute for the Petitioner.
Shri.K.V.Saste A.P.P. for the Respondent.

CORAM : A.S. OKA, J.
DATED : JUNE 14, 2005.

P.C.:
1. Heard learned Advocate for the Petitioner and learned A.P.P. for the State. The Petitioner has been convicted by the learned Judicial Magistrate, First Class for offence punishable under Section 304-A of the Indian Penal Code. He was sentenced to suffer simple imprisonment till the rising of the Court and to pay fine of Rs.3,000/-. The Petitioner was further directed to pay compensation of Rs.5,000/- to the wife of the deceased. The learned Judicial Magistrate directed that in default in payment of fine, the Petitioner will undergo simple imprisonment for three months. In Appeal preferred by the Petitioner, the conviction under section 304-A of the Indian Penal Code has been confirmed by the Sessions Court.

2. The learned Counsel appearing for the Petitioner submitted that this is a case where there is

absolutely no evidence regarding the rash and negligent act on the part of the Petitioner. He submitted that in absence of any evidence in that behalf, finding that the Petitioner has committed offence punishable under Section 304-A of the Indian Penal Code could not have been recorded.

3. In the alternative, the learned Counsel for the Petitioner submitted that the Petitioner is working as a driver in Police Department and the impugned Judgments and Orders may affect his employment and, therefore, leniency deserves to be shown.

4. The learned A.P.P. has supported the impugned Judgments and Orders by pointing out the relevant findings.

5. The Courts below have appreciated the evidence on record including the evidence of the widow of the deceased who is an eye-witness to the incident. The learned Sessions Judge has also considered the evidence on record and has recorded clear findings. The Courts have accepted the evidence of the wife of the deceased and a finding has been recorded regarding rash and negligent driving on the part of the Petitioner. It is a well settled position that in a

revision, the High Court cannot re-appreciate the evidence. The jurisdiction of High Court in a revision is limited. This is not a case where there is any procedural illegality or manifest error of law in the orders passed by the Courts below. This is also not a case where the Courts have overlooked the evidence which is on record. Hence, there is no merit in the first submission of the learned Counsel for the Petitioner.

6. In so far as second submission is concerned, it will be necessary to refer to decision of the Supreme Court reported in 2000(2) Crimes, 280 in the case of Dalbeersingh Vs. The State of Haryana. In case of the offence under section 304-A of the Indian Penal Code, the Apex Court held that latitude should not be shown to sub-offenders. In the present case, in my view, leniency is already shown to the Petitioner by sentencing him to undergo simple imprisonment till rising of the Court.

7. Hence, no case is made out for interference. The Petition is dismissed.

JUDGE